IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.66 OF 1994.

WITH.

CIVIL APPLICATION NO.865 OF 2005

Shri Narayan Laxman Mhatre since
deceased by his heirs & LRs :-
Smr.Barkubai Naraya Mhatre
& ors. : Appellants.

versus

Shri Mangaldas Padamji Patil
since deceased by his heir & LR
Joma Hasu Thakur & ors. : Respondents.

Mr.Vijay Patil for the applicants.
Mr.N.B.Shah with Mr.T.K.Patil for Respondent No.1
Mr.B.R.Patil, AGP, for Respondent No.2.

CORAM : D.G.DESHPANDE,J.

DATED : 4th March 2005.

ORAL ORDER

1. So far as Civil Application is concerned, it is for restoration of the appeal. Heard the advocates for the appellants and respondents. In the circumstances and the explanation given the appeal is restored to file. Civil Application is disposed of.

2. By consent, the appeal is taken up for final hearing. Heard the advocates for the appellants and respondents. The appellants have claimed that particular property belonged to the family and the gift executed by Dharmaji in favour of the trust upon which the findings of both the courts below based in favour of the Trust are not binding upon them and contrary to the record. However, during arguments, the counsel for the appellants contended that they may be permitted to withdraw this appeal with liberty to file a civil suit to establish their right, title and interest in the said property as against the right, title and interest of the Trust.

3. Full Bench of this Court in **Keki Pestonji Jamdar and anr. v. Khodadad Merwan Irani & ors. (AIR 1973 Bombay 130)** has held that Section 80 of the Bombay Public Trust is no bar to the Civil Court jurisdiction to decide the question regarding ownership of the property i.e. whether it is a trust property or it is a property of individual. In view of this, and pursuant to the aforesaid statement, the liberty is granted to file civil Suit.

[D.G.DESHPANDE]

04/03/2005 JUDGE.